

**MINUTES
URBAN COUNTY PLANNING COMMISSION
ZONING ITEMS PUBLIC HEARING**

July 28, 2011

- I. **CALL TO ORDER** – The meeting was called to order at 1:30 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Eunice Beatty; Patrick Brewer; Carla Blanton; Marie Copeland; Mike Cravens, Vice-Chair; Mike Owens; Derek Paulsen; Lynn Roche-Phillips; and William Wilson.

Planning Staff members present: Bill Sallee; Barbara Rackers; Jim Duncan; Jimmy Emmons; Traci Wade; Sharon Buford; Pam Whitaker; and Stephanie Cunningham. Other staff members present were: Rochelle Boland, Department of Law; Captain Charles Bowen, Division of Fire and Emergency Services; Jim Gallimore, Division of Traffic Engineering; Debbie Barnett, Division of Water Quality; and Hillard Newman, Division of Engineering.

- II. **APPROVAL OF MINUTES** – No such items were presented.
- III. **POSTPONEMENTS AND WITHDRAWALS** – No such items were presented.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, July 7, 2011, at 8:30 a.m. The meeting was attended by Commission members: Mike Cravens, Mike Owens, Marie Copeland, Derek Paulsen and Eunice Beatty. Committee members in attendance were: Chuck Saylor, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Cheryl Gallt, Chris Taylor, Denise Bullock, Jimmy Emmons, Barbara Rackers and Traci Wade, as well as Captain Charles Bowen, Division of Fire & Emergency Services; Debbie Barnett, Division of Water Quality and Rochelle Boland, Law Department. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.

- 1. All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
- 2. All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, July 7, 2011, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Patrick Brewer, and William Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

B. FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS – Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

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1. **THOMPSON THRIFT DEVELOPMENT, INC., ZONING MAP AMENDMENT & HAMBURG PLACE COMMUNITY, PHASE II, ZONING DEVELOPMENT PLAN**

- a. MAR 2011-11: THOMPSON THRIFT DEVELOPMENT, INC. (9/5/11)* - petition for a zone map amendment from a Planned Neighborhood Residential (R-3) zone to a High Density Apartment (R-4) zone, for 6.81 net (8.24 gross) acres, for property located at 2391 Sir Barton Way.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 8B) recommends High Density Residential future land use for the subject property. The petitioner proposes to re-zone the subject property in order to facilitate development of 150 apartment units with greater floor area than would otherwise be permitted in the existing R-3 zone.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommended: **Approval**, for the following reason:

1. The request is in agreement with the 2007 Comprehensive Plan for the following reasons:
 - a. The 2007 Comprehensive Plan recommends High Density Residential (HD) future land use for the subject property, defined as 10–25 dwelling units per net acre.
 - b. The petitioner has requested R-4 zoning, with a residential density of 22.03 dwelling units per net acre, in agreement with the density range contemplated by the Plan's land use recommendation.
 - c. The Goals and Objectives of the 2007 Comprehensive Plan are furthered by the proposed re-zoning of the subject property in the following ways:
 - i. The proposed re-zoning is supported by Goal 13, which encourages the provision of housing opportunities to meet the needs of all citizens. The proposal will allow for a variety of residential densities that respect the character of existing nearby neighborhoods, while being consistent with the adopted Comprehensive Plan.
 - ii. The proposed development is supported by Goal 14, Objective F, which encourages new residential developments to exceed the minimum threshold densities.
 2. This recommendation is made subject to approval and certification of ZDP 2011-63: Hamburg Place Community, Phase II, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. ZDP 2011-63: HAMBURG PLACE COMMUNITY, PHASE II (9/5/11)* - located at 2391 Sir Barton Way.
(HDR)

The Subdivision Committee Recommended: **Postponement**. There were questions regarding an encroachment into the floodplain and into the required 25' floodplain buffer, and compliance with off-street parking.

Should this plan be approved, the following requirements should be considered:

1. Provided the Urban County Council rezones the property R-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm sewers, sanitary sewer information, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Denote: No building permit shall be issued unless and until a final development plan is approved by the Planning Commission.
8. Denote 25' floodplain setback.
9. Resolve conflicts between tree preservation areas and proposed impervious surfaces.
10. Clearly denote Lot 3 site statistics.
11. Discuss proposed access location to Sir Barton Way near Flora Fina Street.
12. Discuss building and parking proposed (and possible grading) in FEMA floodplain.
13. Discuss FEMA 100-year floodplain information shown.
14. Discuss parking compliance (.9 spaces per bedroom).
15. Discuss compliance with Article 9 setbacks or possible subdivision to permit 20' building setback.
16. Discuss extent of pavement proposed in front of clubhouse.

Zoning Presentation: Ms. Wade presented the staff's zoning report, briefly orienting the Commission to the location of the subject property at the southwest corner of the intersection of Old Rosebud Road and Sir Barton Way. She said that the subject property is currently vacant, as it has been since it was first re-zoned in 1997. At that time, the subject property was included in the larger rezoning of a large portion of the Hamburg Farm, and it is the last undeveloped residential tract that was part of that 1997 rezoning. Ms. Wade stated that, in the vicinity of the subject property, there are two large residential developments to the west, which are bordered by Star Shoot Parkway,

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Ogden Way, Flying Ebony Drive, and Old Rosebud Road. The Tuscany residential development is located near the subject property to the northeast; Sir Barton Office Park, which is zoned P-1 and contains several banks and a business college, is located to the north and northeast; Old Rosebud Road, which is adjacent to the subject property, continues across Sir Barton Way and connects to the frontage road for the Hamburg shopping center in the vicinity of the Garden Ridge store.

Ms. Wade stated that the petitioner is proposing to re-zone the property to R-4 in order to construct two multi-family buildings and a clubhouse. That use would be permitted in the existing R-3 zone, but the multi-family buildings are proposed to exceed the .5 floor area ratio that is allowed in the R-3 zone. The R-3 and R-4 zones permit the same uses, but have different requirements with regard to height-to-yard ratio and floor area, which is allowed to be .7 in the R-4 zone. Ms. Wade displayed several aerial and ground-level photographs of the subject property and surrounding area.

Ms. Wade stated that the 2007 Comprehensive Plan recommends High Density Residential land use for the subject property, and a density of 10-25 dwelling units per net acre. The petitioner is proposing to construct 150 dwelling units, at a density of 22.03 units per acre, on the property. The existing R-3 zone could allow the same number of units, but the proposed units would be larger and taller if permitted in the R-4 zone. The staff believes the R-4 zone would allow the petitioner the flexibility to differentiate the proposed units from others in the area, and would provide for more varied types of housing in the Hamburg area.

Ms. Wade stated that the staff believes that the proposed rezoning to R-4 is in agreement with both the Land Use Element and the Goals and Objectives of the Comprehensive Plan. Goal 13, in particular, encourages the provision of a variety of housing densities; and Goal 14, Objective F, refers to exceeding the minimum threshold densities recommended by the Comprehensive Plan. Ms. Wade said that the staff and the Zoning Committee recommended approval of this request, for the reasons as listed on the agenda.

Commission Question: Ms. Copeland asked how many floors would be permitted in the proposed buildings. Ms. Wade answered that Mr. Emmons would address that question in his presentation on the corollary zoning development plan.

Development Plan Presentation: Mr. Emmons presented a rendering of the preliminary development plan, which was a revised submission following the Subdivision Committee meeting. The Subdivision Committee recommended postponement of the plan as initially submitted, due to concerns about encroachment of buildings and parking into the floodplain and compliance with off-street parking. Since the Subdivision Committee meeting, the petitioner had submitted two revised plans, the most recent of which has addressed the majority of the concerns raised by the Committee members.

Mr. Emmons stated that the petitioner is proposing three access points for the subject property: two along Sir Barton Way, and one to Old Rosebud Road, across from an existing entrance to the office area. Using the rendered development plan, Mr. Emmons noted that the subject property was part of an overall development plan that covers this portion of the Hamburg development. He said that the petitioner proposes to construct 150 apartment units in two buildings, with a total of 246 bedrooms. That number of units and bedrooms would require 224 parking spaces, which the petitioner has depicted on the development plan. The apartment buildings and clubhouse are proposed to be just under 200,000 square feet in size and three stories in height, and comprise a FAR of .66. The development plan also depicts an outdoor pool area adjacent to the clubhouse.

Mr. Emmons said that the Subdivision Committee had expressed concerns about unsafe access points to Sir Barton Way on the previous plan, noting that the accesses originally proposed did not line up with the existing median breaks. The proposed accesses were near enough to the median breaks; however, the staff was concerned that drivers might attempt to use them to enter the subject property, which could result in an unsafe situation. In response, the petitioner relocated the access points, which was acceptable to the staff as well as to the Division of Traffic Engineering. Mr. Emmons said that those accesses would function as right-in/right-out turns, which should help them to function more safely.

Mr. Emmons stated that the Subdivision Committee had also expressed concern about the existing FEMA floodplain on the subject property. On the original plan submissions, the proposed buildings were depicted as being within the regulatory floodplain. With their revised submission, those buildings have been removed from the floodplain area, although some parking has been proposed in the floodplain. Mr. Emmons noted that, on the revised plan, the petitioner had also included information about the post-development floodplain. He explained that the post-development floodplain area is predicted using hydrologic analysis for the subject property and a drainage study for the entire Hamburg Farm development. Those studies determined that the majority of the stormwater that passes through the subject property travels from a small detention basin, under Sir Barton Way, and eventually to the greenspace area near the Wal-Mart and Lowe's stores closer to Winchester Road. Article 19 of the Zoning Ordinance requires that all development must be constructed outside of the regulatory and post-development

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floodplain areas. Mr. Emmons said that the petitioner's revised plan does depict all of the proposed structures as outside of the floodplain area. Some garages, however, are proposed to be constructed within the 25' floodplain setback; at the time of a final development plan for the property, the petitioner will need to either relocate those garages, or request a Special Permit Use from the Division of Engineering to allow them to be constructed within that setback.

Mr. Emmons stated that, based on the most recent plan revision, the staff is now recommending approval of this zoning development plan, subject to the following revised conditions:

1. Provided the Urban County Council rezones the property R-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm sewers, sanitary sewer information, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Denote: No building permit shall be issued unless and until a final development plan is approved by the Planning Commission.
- ~~8. Denote 25' floodplain setback.~~
- ~~8.9. Resolve Denote: The conflicts between tree preservation areas and proposed impervious surfaces will be reviewed at the time of a final development plan.~~
- ~~10. Clearly denote Lot 3 site statistics.~~
- ~~11. Discuss proposed access location to Sir Barton Way near Flora Fina Street.~~
- ~~9.12. Discuss building and Denote: The parking proposed (and possible grading) in FEMA floodplain must be approved as a Special Permit Use.~~
- ~~13. Discuss FEMA 100-year floodplain information shown.~~
- ~~14. Discuss parking compliance (.9 spaces per bedroom).~~
- ~~10.15. Discuss compliance with Article 9 setbacks Denote: The need for a variance or possible subdivision to permit 20' building setback will be reviewed at the time of a final development plan.~~
- ~~16. Discuss extent of pavement proposed in front of clubhouse.~~

With regard to the conditions for approval, Mr. Emmons said that #8 refers to the depiction of the tree canopy area of the subject property in the same location as a parking lot. He noted that a tree inventory, rather than a tree preservation area, is typically all that is required on a preliminary development plan. With regard to condition #9, Mr. Emmons explained that Article 19 requires that, if a post-development floodplain is different from a FEMA regulatory floodplain, the developer is required to file a Letter of Map Revision with FEMA, in order to align the post-development and regulatory floodplains on the FEMA maps. Since the proposed development is considered a Group Residential Project, a minimum setback of either 20' or the height of the building is required; the buildings are proposed to be three stories, or approximately 35', in height. Mr. Emmons stated that, at the time of the final development plan, the petitioner could appeal to the Board of Adjustment for a variance to the required 20' setback, or they could subdivide the property so that each of the two principal buildings exists on a separate lot, controlled by a development plan. If the property was subdivided in that manner, it would no longer meet the definition of a Group Residential Project, so no variance to the setback requirements would be necessary. Either of those options would be agreeable to the staff, and it would be appropriate to review the issue at the time of the final development plan.

Addressing Ms. Copeland's earlier question about the allowable height of the buildings, Mr. Emmons stated that a height-to-yard ratio applies in the requested R-4 zone. There is a provision in the Zoning Ordinance, however that, provided the buildings are less than 35 feet in height, then normal 5' setbacks would generally apply. For buildings greater than 35 feet in height, the setback increases proportionally with the height of the structure, at a 2:1 (height-to-yard) ratio.

Commission Questions: Ms. Copeland said that the rear portion of the property near the floodplain could be an ideal location for a penthouse apartment, since it would provide a view of all four sides of the property, but it would require that a fourth story be added to the proposed buildings. Mr. Emmons said that it would be possible for the petitioner to add a fourth story, but it would require other changes to the proposed development, since they are currently very close to the maximum FAR allowed in the R-4 zone. The petitioner would only have the ability to construct approximately 9,000 additional square feet of building space, which would be less than 10 percent increase of the floor area of such a large-scale project. Ms. Copeland asked if the petitioner could "stair-step" the building floors in order to accommodate an additional story. Mr. Emmons responded that that was possible in the requested R-4 zone.

Ms. Copeland stated that she appreciated that the petitioner had depicted the post-development floodplain on this plan, and asked if the stormwater runoff through the subject property would be from the entire development. Mr. Emmons answered that that was accurate; but he noted that, since the submission of the revised development plan, the petitioner had submitted a drainage report. A review of the "micro-watersheds" revealed that the only runoff on

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the subject property would come from a detention basin with a 4" pipe; a small portion of Sir Barton Way; and a portion of the development on the other side of Sir Barton Way. Once the water flows to Old Rosebud Road, a 60" culvert is in place to drain there. Mr. Emmons added that the petitioner had completed a HEC (Hydrologic Engineering Center) study for the subject property, and the staff felt very comfortable with the accuracy of the floodplain information provided on this plan.

Ms. Roche-Phillips asked if the footprint of the buildings would be 200,000 square feet, or if that number represented floor space. Mr. Emmons responded that that number represents the total floor area, and that the lot coverage proposed is approximately 80,000 square feet. Ms. Roche-Phillips asked if more parking would be required, should the petitioner propose to increase the height of the buildings beyond three stories. Mr. Emmons answered that additional parking would be required only if the petitioner proposed to add more dwelling units or bedrooms.

With regard to Ms. Copeland's question about the proposed height of the buildings, Ms. Roche-Phillips asked if the setback requirement for the subject property would be double the height requirement. Mr. Emmons responded that a 40' building would require a 20' setback.

Mr. Owens asked if the petitioner will still need to file a Letter of Map Revision (LOMR) with FEMA, since the revised plan removed the proposed buildings from the floodplain area. Mr. Emmons answered that the petitioner would not need to file a LOMR at this time; when the final development plan for the property is filed, however, a LOMR will need to be completed in order to reconcile the location of the post-development floodplain and the regulatory floodplain. He added that the petitioner would first need to file a Conditional Letter of Map Revision (CLOMR), followed by a LOMR; the CLOMR serves as a sort of "national permit" to change the location of the floodplain. The LOMR would then ensure that conditions on the ground match the location of the regulatory floodplain. Mr. Owens asked if the petitioner should begin that paperwork process now. Mr. Emmons answered that the petitioner could begin the process at any time, until the filing of a final development plan for the property. At that time, a CLOMR and LOMR would become part of the staff's official recommendation. Mr. Emmons added that that process can take some time, so it might be to the petitioner's benefit to begin it now in order to avoid future delays for the proposed development. Mr. Owens said that it appeared on the development plan that some parking spaces encroach into the floodplain, and asked if that was acceptable to the staff. Mr. Emmons responded that parking in the floodplain is allowable under our local zoning regulations as a Special Permit Use. He noted that, once the post-development floodplain (based on the HEC study) location becomes official, there should be much less encroachment of those parking spaces into the floodplain.

Petitioner Representation: Mark McIntosh, HDR Engineering, stated that the petitioner was in agreement with the staff's recommendations, and he requested approval.

Citizen Comments: There were no citizens present to comment on this proposal.

Action: A motion was made by Mr. Owens, seconded by Mr. Paulsen, and carried 9-0 to approve MAR 2011-11, for the reasons provided by staff.

Development Plan Action: A motion was made by Mr. Owens, seconded by Mr. Paulsen, and carried 9-0 to approve ZDP 2011-63, subject to the 10 conditions as listed in the revised staff recommendation.

C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENT REQUESTS

1. ZOTA 2011-6: SHREDDING, BALING & STORAGE OF PAPER SCRAP IN THE B-4 ZONE (12/6/11)* – text amendment to Article 8-21(b) to allow shredding and baling of paper scrap and storage of waste paper in the Wholesale & Warehouse Business (B-4) zone.

REQUESTED BY: Fortune Business Center, LLC

PROPOSED TEXT: (Note: Text underlined is an addition, while text ~~dashed through~~ is a deletion to the current Zoning Ordinance.)

ARTICLE 8 8-21 WHOLESALE AND WAREHOUSE BUSINESS (B-4) ZONE

8-21(b) Principal Uses (Other uses substantially similar to those listed herein shall also be deemed permitted.)

24. Shredding and baling of paper scrap and storage of waste paper shall be permitted when wholly conducted in a completely enclosed building located at least four hundred (400) feet from any residential zone.

8-22 LIGHT INDUSTRIAL (I-1) ZONE

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- 8-22(b) Principal Uses** (Other uses substantially similar to those listed herein shall also be deemed permitted.)
1. The principal permitted uses in the B-4 zone.
 5. Recycling, sorting, baling and processing of glass and nonferrous metals, including copper; brass; aluminum; lead and nickel, but not including automobile wrecking yard; building materials salvage; junk yards or other uses first permitted in the I-2 zone. Recycling, sorting, baling and processing of paper scrap and storage of waste paper shall be permitted only when wholly conducted in a completely enclosed building.

Staff Alternative Text

(Note: Text underlined and italicized is an addition, while text ~~dashed-through and italicized~~ is a deletion to the text of the Zoning Ordinance.)

ARTICLE 8

8-21 WHOLESALE AND WAREHOUSE BUSINESS (B-4) ZONE

- 8-21(b) Principal Uses** (Other uses substantially similar to those listed herein shall also be deemed permitted.)
24. Shredding, *sorting* and baling of paper scrap and storage of waste paper, ~~shall be permitted when wholly conducted in a completely enclosed building located at least four hundred (400) feet from any residential zone.~~

8-22 LIGHT INDUSTRIAL (I-1) ZONE

- 8-22(b) Principal Uses** (Other uses substantially similar to those listed herein shall also be deemed permitted.)
1. The principal permitted uses in the B-4 zone.
 5. Recycling, sorting, baling and processing of glass and nonferrous metals, including copper; brass; aluminum; lead and nickel, but not including automobile wrecking yard; building materials salvage; junk yards or other uses first permitted in the I-2 zone. Recycling, ~~*sorting, baling*~~ and processing of paper ~~*scrap and storage of waste paper*~~ shall be permitted only when wholly conducted in a completely enclosed building.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommended: **Approval of the Staff Alternative Text**, for the following reasons:

1. Document shredding, baling and storage is reasonably considered to have a similar impact to other warehousing and storage uses, which are principal permitted uses in the Wholesale and Warehouse (B-4) zone, pursuant to Article 8-21(b)2 of the Zoning Ordinance.
2. Federal and state privacy laws over the past 25 years have created a new industry dedicated solely to document destruction for the protection of personal sensitive information. The less intense use of shredding, baling and storage of paper is now considered a separate function from recycling centers.
3. The Goals and Objectives of the 2007 Comprehensive Plan support allowing "greater flexibility within commercial, office, warehouse, and industrial areas . . . where these uses will not conflict with residential and agricultural uses." (Goal 11: Employment Diversity, Objective L). This particular amendment will allow additional land in the community to be available for shredding, baling and storage of paper, while maintaining the more intensive recycling and processing of paper in the I-1 zone.

Staff Presentation: Ms. Wade presented the staff report on this Zoning Ordinance text amendment request, explaining that the petitioner is requesting to amend Article 8-21 in order to permit shredding, baling and storage of paper scrap in the Wholesale and Warehouse Business (B-4) zone. She noted that that use is currently allowed in the Light Industrial (I-1), and Office, Industry & Research Park (P-2) zones as a principal permitted use. The Division of Building Inspection made an interpretation that, because paper shredding and baling first appear in the Zoning Ordinance as permitted uses in the I-1 zone, they are not permitted in the B-4 zone.

Ms. Wade stated that the impetus behind the proposed text amendment was the desire of a local business to relocate their operation from an I-1 zone to a B-4 zone. When the petitioner discovered that such a use was not permitted in the B-4 zone, they sought guidance from the Division of Building Inspection. They advised them that it would be most appropriate to request a text amendment from the Planning Commission

Ms. Wade said that the petitioner's justification indicates that the outsourced shredding industry is very different from the recycling and processing of paper, and requests that shredding should be separated from recycling in the Zoning Ordinance. The petitioner also noted that the shredding industry has grown significantly over the past 25 years, with which the staff agreed following their research on the subject, due primarily to the need for protection from identity theft for financial, health, and educational information.

Ms. Wade said that the staff's research discovered that there were many pieces of legislation directly related to the destruction of paper and personal information; three prominent ones are: the Health Insurance Portability and Accountability Act (HIPAA); the Graham-Leach-Bliley Act (GLIBA); and the Family Educational Rights and Privacy Act (FERPA). Legislation changed the operation of the shredding industry so that it is no longer a by-product of recycling, but an indus-

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try in its own right.

Ms. Wade said that the staff paid a site visit to a local facility in order to view an existing shredding operation. The staff learned that most shredding companies have both a mobile operation and on-site facilities. Ms. Wade displayed several photographs of the shredding process and equipment used at the facility, noting that the staff had two concerns when they visited the shredding facility: the first was the presence of a mobile unit onsite performing shredding outside of the enclosed facility, and the noise that could possibly be generated by that operation. However, the staff believes that, since many companies use mobile shredders at business sites, which results in shredding operations occurring in many different zones, the level of noise produced has already been proven not to be a nuisance to others in those areas. The staff was also concerned, prior to entering the petitioner's facility, about the noise produced by the shredding machinery. The staff found that no personal protective equipment for noise reduction was required for the staff of the facility. In fact, the air quality system and the baler were actually louder than the shredder, so the staff determined that the process of paper shredding is not noise-intensive.

Ms. Wade stated that the petitioner proposed a new use in the B-4 related to shredding, sorting and baling of paper, and storage of waste paper in a wholly enclosed building when located 400' from any residential zone. In reviewing the petitioner's proposed text, the staff determined that it was not appropriate to specify a particular required distance from a residential zone, since the noise was not nearly as intense as some of the other permitted B-4 uses, which are not regulated in that fashion. The staff also believed that the inherent 100' distance restriction from any residential zoning for overhead doors in the B-4 zone should provide sufficient protection for residential zones. Ms. Wade noted that the staff also proposed a small change to the I-1 zone, to clarify that shredding and baling would be B-4 uses, while recycling would remain an I-1 use. She said that the staff is recommending approval of the staff alternative text, for the reasons as listed on the agenda.

Petitioner Representation: Mike Meuser, attorney, was present representing the petitioner. He said that the staff had described the petitioner's operation well in their report, and the petitioner was in agreement with the staff's recommendation.

Action: A motion was made by Ms. Blanton, seconded by Mr. Brewer, and carried 9-0 to approve ZOTA 2011-6, for the reasons provided by staff.

2. ZOTA 2011-7: AMENDMENT TO ARTICLE 27-8 TO UPDATE REFERENCES TO CODES FOR PROPERTIES WITHIN THE CA OVERLAY ZONE – text amendment to Article 27-8 to reference the proper codes pertaining to the review of properties within the Courthouse Area Design Overlay Zone.

REQUESTED BY: Urban County Planning Commission

PROPOSED TEXT: (Note: Underlined text indicates an addition, ~~text dashed through~~ indicates a deletion to the current Zoning Ordinance.)

ARTICLE 27: COURTHOUSE AREA DESIGN OVERLAY ZONE

27-8 COMPLIANCE WITH OTHER CODES, STATUTES AND REGULATIONS - In order to prevent purposeful neglect of structures within zones protected by CA overlays, all properties shall comply with the ~~BOCA, adopted Basic~~ Basic Property Maintenance Code, as well as all other applicable codes, statutes, and regulations. To accomplish this, the Design Review Officer shall ~~quarterly~~ annually consult with appropriate enforcement officials and compile and forward to the Board and the Court House Area Design Review Board a list of those properties in zones with CA overlays which have been found to be in violation of the ~~BOCA Basic Property Maintenance International Property Maintenance Code, 1998 Edition~~.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommended: **Approval**, for the following reasons:

1. This is a timely and appropriate amendment to Article 27-8 of the Zoning Ordinance in order to update incorrect references, and to alter the frequency of required meetings with code enforcement officials from a quarterly to an annual basis.
2. These changes were recommended by the Divisions of Code Enforcement and Fire and Emergency Services, and were requested by the Courthouse Design Review Board.

Staff Presentation: Ms. Wade presented the staff report on this Zoning Ordinance text amendment request, noting that it had been initiated by the Planning Commission in order to update several references to property maintenance codes in the Courthouse Area Overlay Zone and to reduce the frequency of required meetings between the staff of the Courthouse Area Design Review Board (CHADRB) and Code Enforcement, changing it from a quarterly to an annual basis.

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Ms. Wade stated that this text amendment was requested by the CHADRB at the recommendation of the staff of Code Enforcement and the Division of Fire & Emergency Services. The Zoning Ordinance currently refers to the BOCA property maintenance code; however, the Division of Code Enforcement currently uses the 1998 edition of the International Maintenance Code, so they requested this text amendment for consistency's sake. Ms. Wade explained that there are more recent editions of that particular Code, but the Code Enforcement staff prefers the 1998 edition because it addresses nuisance issues such as overgrowth in yards; and it addresses dwelling unit occupancy and provides for a minimum occupancy requirement related to habitable square footage.

With regard to the reasons for the proposed changes to the frequency of required meetings, Ms. Wade said that there are not enough violations to justify quarterly meetings, and the CHADRB staff member currently meets with the Divisions of Code Enforcement and Fire & Emergency Services as needed. She stated that the staff is recommending approval of the proposed text amendment, for the reasons as listed on the agenda.

Commission Questions: Ms. Copeland asked what action would take place if a code violation was discovered within the Courthouse Area Design Overlay Zone. Ms. Boland answered that the issue would go through the standard Code Enforcement process. If a citation was issued, the property owner would be required to repair it, or face the citation process, which could result in the placement of a lien on their property. Ms. Copeland asked if this process had ever been used downtown before. Ms. Wade clarified that the proposed change relates to how often Code Enforcement is required to report to the CHADRB, rather than any actual change in enforcement procedures.

Ms. Roche-Phillips asked if the CHADRB ever acted upon the issue of placing a stay on demolition permits for properties within the Courthouse Area Overlay. Ms. Wade answered that the Planning Commission acted on that matter with a text amendment in 2009.

Mr. Owens said, with regard to the proposed text, that the following statement was unclear "... consult with appropriate enforcement officials and compile and forward to the Board and the Court House Area Design Review Board ...". He asked if it would be appropriate to remove one of those references to the Board. Ms. Wade reviewed the Zoning Ordinance, determined that that was a duplication, and stated that it would be appropriate to remove the reference to the "Court House Area Design Review Board," since that body is referred to as the "Board" in this section of the Ordinance.

Action: A motion was made by Mr. Brewer, seconded by Ms. Roche-Phillips, and carried 9-0, for the reasons as listed on the agenda, and eliminating "and the Court House Area Design Review Board" from the proposed text.

VI. COMMISSION ITEMS

- A. **2012 COMPREHENSIVE PLAN** – At this time, the Commission will consider potential changes to the draft of the 2012 Comprehensive Plan Goals and Objectives, and will consider scheduling a public hearing at a future date to adopt the Goals and Objectives.

Mr. Duncan stated that the goal for this meeting was to finalize the draft of the Goals and Objectives that was discussed at the Commission's last work session, and to set a public hearing date. At the hearing, the Commission will take public comments about the draft Goals and Objectives; the staff is recommending that that hearing take place following the Commission's Zoning Public Hearing on August 25th.

Action: A motion was made by Mr. Wilson, seconded by Mr. Paulsen, and carried 9-0 to accept the Goals and Objectives as presented, and to set a public hearing date of August 25th.

Mr. Duncan said that the staff would publicize the upcoming public hearing as required, and the Goals and Objectives would be listed on the Comprehensive Plan website as well.

- B. **ELECTION OF OFFICERS** – With the expiration of the terms of Ms. Carolyn Richardson and Mr. Ed Holmes, the Commission shall consider the election of a new Chairperson and Parliamentarian. The nominating committee appointed earlier this month by the Chair will present its slate for consideration by the Planning Commission. Nominations may also be made from the floor.

The current officers are as follows:

Chair	-	Vacant
Vice Chairperson	-	Mike Cravens
Secretary	-	Mike Owens
Parliamentarian	-	Vacant

Mr. Cravens asked for a report from the nominating committee, which included Ms. Beatty, Ms. Blanton, and Mr. Paulsen.

* - Denotes date by which Commission must either approve or disapprove request.

Commission Question: Mr. Brewer asked if there was a deadline for the nomination of officers. Ms. Boland answered that there was no deadline; however, the Planning Commission by-laws set forth that the election of officers shall be held each January. She read the following from the by-laws: "Vacancies in office shall be filled immediately by nominations from the floor, and the candidate receiving the majority of votes will take office at the close of the meeting." Mr. Brewer asked if the discussion of the elections could take place in a closed session, rather than a public meeting. Ms. Boland responded that it could not, as long as a quorum of the Commission was present. She added that, anytime a quorum is present, the meeting must be subject to all open meeting provisions.

Mr. Paulsen stated that the nominating committee had met immediately prior to today's public hearing, and that they would like to put forth the following slate of officers:

Chair	-	Mike Cravens
Vice-Chair	-	Mike Owens
Secretary	-	Lynn Roche-Phillips
Parliamentarian	-	Patrick Brewer

Mr. Cravens asked if there were any nominations from the floor; there were none.

Motion: A motion was made by Ms. Blanton and seconded by Mr. Paulsen to nominate the slate of officers as presented.

Discussion of Motion: Ms. Roche-Phillips asked if the nominating committee had discussed the nominations with those on the slate; she said she had not been asked if she would be interested in serving as secretary. Ms. Beatty answered that the nominating committee had not had any discussions with the members proposed for nomination, but they discussed the possibility of receiving input from the rest of the Commission members. She added that she believed that the process was overly expedient, and the nominating committee had had several questions about the by-laws, the nomination process, and what the committee could and could not do. The nominating committee believed that it might have been helpful to have a closed session in which they could have had discussions with those proposed for nomination to determine their availability and willingness to serve.

Mr. Cravens asked Ms. Roche-Phillips if she wished to be removed from the slate. She answered that she did not, but noted that protocol in the past had been to canvass the Commission by phone prior to presenting the slate at a public hearing.

Mr. Cravens said that he had served on the nominating committee in the past, and their meeting was generally conducted somewhat informally over lunch. He added that those proposed for nomination had the opportunity to remove themselves from the slate if they so chose.

Mr. Brewer asked what the duration of the term would be for the proposed officers. Mr. Cravens answered that the term would expire in January of 2012.

Mr. Paulsen stated that the nominating committee was unsure of the appropriate process for getting feedback from the Commission members about the proposed slate of officers. They believed that, should one of the proposed officers not wish to serve, they could decline, and new nominations could be made from the floor.

Mr. Wilson asked if the proposed officers would serve only until January of 2012. Mr. Cravens answered that that was correct; this election was being held to fill the positions of Carolyn Richardson and Ed Holmes, whose terms had expired.

Mr. Brewer said that he believed that discussions of this nature should be carried out in some venue other than a public meeting. He suggested that the Planning Commission consider what actions could be taken to allow that type of frank discussion to take place in private, rather than publicly, prior to the election of officers. Ms. Boland noted that that would require a change of the Open Meetings Act, which is a state law.

Ms. Beatty said that she appreciated the response from the Planning and Law Department staff members who assisted the nominating committee when they were looking for direction as to how to proceed.

Action: Ms. Blanton's motion carried, 6-3 (Copeland, Owens, and Roche-Phillips opposed).

Ms. Beatty asked for clarification with regard to what types of discussion could take place if a quorum of the Commission members was not present. Ms. Boland answered that any meeting at which a quorum of the Commission is present must be a public meeting. The Commission's standing Subdivision and Zoning Committee meetings are an exception, since they must also be public meetings. Any other meeting that does not include a quorum of the Commission would not be considered a formal meeting.

Mr. Brewer asked why the Commission could not have met in such a fashion in order to discuss the slate of officers prior to the vote. Ms. Boland responded that there was a quorum of the Commission members present at this hearing, which constitutes a public meeting.

Ms. Blanton asked if it would be considered unlawful for the Commission members to subdivide themselves so as to avoid the Open Meetings Law. Ms. Boland answered that such a division of the Commission would definitely be unlawful if it was done for the specific purpose of avoiding the Open Meetings Law. She noted that there are only two exceptions to that law, for discussion of acquisition of property, or personnel matters.

VII. **STAFF ITEMS** – No such items were presented.

VIII. **AUDIENCE ITEMS** – No such items were presented.

IX. **MEETING DATES FOR AUGUST, 2011**

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	August 4, 2011
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	August 4, 2011
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	August 11, 2011
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	August 18, 2011
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	August 24, 2011
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	August 25, 2011

X. **ADJOURNMENT** – There being no further business, Chairman Cravens declared the meeting adjourned at 2:22 p.m.

TLW/TM/BJR/WLS/src

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